IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.814 OF 2006
IN
SUIT NO.2964 OF 1994

Siddiqua, daughter of
Sayed Mustafa
Sayed Murtaza Miraie ..Plaintiff.

Vs.

Sakinabai Wd/o. Sayed
Mustafa Sayed Murtaza
Miraie (since deceased)
Sayed Jaleel Sayed
Mustafa Miraie & Ors. ..Defendants.

Mr.Bharat Vaishnawa i/b.Bharat Vaishnawa & Co. for the Plaintiff.

None for the Defendants.

CORAM : S.J. VAZIFDAR, J.
DATED : 10TH JULY, 2007

P.C. :

The suit is filed for a declaration that each of the Plaintiffs have a 7th/40th share in the suit properties described in Exhibits "A", "B", "C", "E" and "G" and for partition thereof and accounts.

2. One of the properties is a tenanted premises in which a business of a restaurant is being carried on. Plaintiff No.1 and Original Plaintiff No.2 are the daughters of one Sayed Mustafa Murtaza Miraie, who expired in 1952. Original Defendant No.1 was

the wife of the deceased. Defendant No.2 (now Defendant No.1), is the son of the deceased. Defendant No.3 (now Defendant No.2) is another daughter of the deceased. Original Plaintiff No.2 is now transposed as Defendant No.3.

3. The Plaintiff, for the purpose of this Notice of Motion, restricts the relief only in respect of the tenanted premises from which the restaurant business is being carried on. The tenancy receipt in respect of the said premises was transferred in the name of Original Defendant No.1 i.e. the mother of the Plaintiff and Defendant Nos.1, 2 and 3.

4. Mr.Vaishnawa, the learned counsel appearing on behalf of the Plaintiffs, invited my attention to a letter dated 10.9.1999 addressed by the deceased mother to the landlord of the said premises requesting them to transfer the rent receipts from her name to the names of her daughter viz. the Plaintiff and Defendant Nos.2 and 3.

5. By another document dated 10.9.1999 the deceased mother gifted and transferred the restaurant with running business, all articles, goodwill and tenancy rights to her daughters absolutely.

6. In any event, all the children would have an interest in respect of the said premises and the business being carried on therein. It appears that at one time there was a conductor of the said business. Thereafter, Defendant No.1 appears to have taken possession to the exclusion of his sister.

7. There is no affidavit in reply filed. Defendant No.1 has not appeared.

8. In the circumstances, the Notice of Motion is made absolute in terms of prayer b(i) except the words bracketed in red.

9. Liberty to the Plaintiff to apply for withdrawal after the royalty is fixed.

10. In addition thereto, there shall be an order in terms of prayer (c)(i), (c)(ii) and c(iii) except the words bracketed in red.

All parties to act on an ordinary copy of this order duly authenticated by the Associate/Personal Assistant.